United Nations PCNICC/2001/L.1/Rev.1/Add.3*

Preparatory Commission for the International Criminal Court

Distr.: Limited
18 April 2001

English only

New York
26 February-9 March 2001
24 September-5 October 2001

Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001)

Addendum

Annex IV

Draft agreement on the privileges and immunities of the Court

Discussion paper proposed by the Coordinator

The States Parties to the present Agreement,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas article 4 of the Rome Statute provides that the International Criminal Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the International Criminal Court shall enjoy in the territory of each State Party to the Rome Statute such privileges and immunities as are necessary for the fulfilment of its purposes;

Have agreed as follows:

* Reissued for technical reasons.

01-29901* (E) 180401

Article 1[1]
Use of terms

For the purposes of the present Agreement:

(a) "the Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;

(b) "the Court" means the International Criminal Court established by the Statute;

(c) "States Parties" means States Parties to the present Agreement;

(d) "Representatives of States Parties" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;

(e) "Assembly" means the Assembly of States Parties to the Statute;

(f) "judges" means the judges of the Court;

(g) "the Presidency" means the organ composed of the President and the First and Second Vice-Presidents of the Court;

(h) "Prosecutor" means the Prosecutor elected by the Assembly of States Parties to the Statute in accordance with its article 42, paragraph 4;

(i) "Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly of States Parties to the Statute in accordance with its article 42, paragraph 4;

(j) "Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;

(k) "Deputy Registrar" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;

(m) "Secretary-General" means the Secretary-General of the United Nations;

(n) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2
Legal status and juridical personality of the Court

The Court shall have international legal personality and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It shall, in particular, have the capacity to contract, to acquire and dispose of immovable and movable property and to participate in legal proceedings.

[1] The present list of terms is not closed. Other terms could be added.

Article 3
General provisions on privileges and immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

Article 4
Inviolability of the premises of the Court

The premises of the Court shall be inviolable.

Article 5
Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 6
Immunity of the Court, its property, funds and assets

1. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is understood that any measure of-execution shall require a separate express waiver of immunity.[2]

2. The property, funds and assets of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Court, the property, funds and assets of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, controls or moratoria of any nature.

Article 7
Inviolability of archives and documents

The archives of the Court, and in general all documents and materials[3] being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 8
Exemption from taxes, customs duties and import or export restrictions

1. The Court, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes, which include, inter alia, income

[2] A concern was raised as to whether funds, property and assets of the Court could be subject to execution.

[3] It was the understanding that the word "materials" covers all evidence.

tax, capital tax, corporation tax as well as direct taxes levied by local and provincial authorities. It is understood, however, that the Court shall not claim exemption from taxes which are, in fact, no more than charges for public utility services, provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. The Court shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Court for its official use and in respect of its publications.

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the competent authorities of that State Party.

Article 9
Reimbursement of duties and/or taxes

1. The Court shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Court for its official use makes major purchases of property and goods or services on which identifiable duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or reimbursement shall be accorded in respect of charges for public utility services provided to the Court.

Article 10
Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoria of any kind, while carrying out its activities:

(a) The Court may hold funds, currency of any kind or gold and operate accounts in any currency;

(b) The Court shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) The Court may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities;

(d) The Court shall enjoy the same facilities, if any, in respect of rates of exchange for its financial transactions as are accorded to the most favourably treated foreign mission in that particular State Party.[4]

[4] This subparagraph will be the subject of further discussion in the Working Group.

2. In exercising its rights under paragraph 1, the Court shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Court.

Article 11
Facilities in respect of communications

1. The Court shall enjoy in the territory of each State Party for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications or correspondence of the Court.

3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.

4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Court shall have the right to operate radio and other telecommunications equipment on its registered frequencies and those allocated to it, in accordance with their national procedures, by the States Parties concerned.[5]

Article 12
Exercise of the functions of the Court outside the headquarters

In the event that the Court pursuant to paragraph 3 of article 3 of the Statute considers it desirable to sit elsewhere than at its headquarters at The Hague in the Netherlands, the Court may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

Article 12 bis[6]
Crimes under the jurisdiction of the Court

Article 13
Privileges and immunities of the representatives of States participating in the Assembly and its subsidiary organs

1. Representatives of States Parties to the Statute[7] attending meetings of the Assembly and its subsidiary organs, representatives of other States that may be attending meetings of the Assembly and its subsidiary organs as observers in

[5] This paragraph will be the subject of further discussion in the Working Group.

[6] Articles 13 to 17 are without prejudice to article 27 of the Statute. This proposed provision for article 12 bis requires further discussion.

[7] The question of whether this article should deal with the representatives of States Parties to this Agreement as opposed to the representatives of States Parties to the Statute needs further consideration.

accordance with paragraph 1 of article 112 of the Rome Statute, and representatives of intergovernmental organizations invited to meetings of the Assembly and its subsidiary organs shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

2. (a) Immunity from personal arrest or detention;

(b) Immunity from legal process of any kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned may have ceased to exercise their functions as representatives;

(c) Inviolability of all papers and documents;

(d) The right to use codes, to receive papers or correspondence by courier or in sealed bags and to receive and send electronic communications;

(e) Exemption from immigration restrictions, alien registration requirements and national service obligations in the State Party they are visiting or through which they are passing in the exercise of their functions;

(f) The same privileges and facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys under the Vienna Convention;

(h) The same protection and repatriation facilities as are accorded to diplomatic agents in time of international crisis under the Vienna Convention;

(i) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives described in paragraph 1 attending the meetings of the Assembly and its subsidiary organs are present in a State Party for the discharge of their duties shall not be considered as periods of residence.

4.3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the State Party of which he or she is a national or of the State Party or intergovernmental organization of which he or she has been a representative.

Article 13 bis[8]
Privileges and immunities of the representatives of States participating in the proceedings of the Court

Representatives of States participating in the proceedings of the Court shall, while exercising their official functions, and during their journey to and from the place of the proceedings, enjoy the privileges and immunities referred to in article 13.

Article 14[9]
Judges, Prosecutor, Deputy Prosecutors and Registrar

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words, which had been spoken or written and acts which had been performed by them in their official capacity.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Court is sitting. On journeys in connection with the exercise of their functions, they shall in all States Parties through which they may have to pass enjoy all the privileges, immunities and facilities granted by States Parties to diplomatic agents in similar circumstances under the Vienna Convention.

3. If a judge, the Prosecutor, a Deputy Prosecutor or the Registrar, for the purpose of holding themselves at the disposal of the Court, reside in any State Party other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities of diplomatic agents and facilities during the period of their residence.

4. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households in time of international crisis shall be accorded the same repatriation facilities as are accorded to diplomatic agents under the Vienna Convention.

5. Paragraphs 1 to 4 of this article shall apply to judges of the Court even after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10, of the Statute.

6. The salaries, emoluments and allowances paid to the judges, the Prosecutor, the Deputy Prosecutors and the Registrar by the Court shall be exempt from taxation. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in a State Party for the discharge of their functions shall not be

[8] The question of whether this article should deal with the representatives of States Parties to this Agreement as opposed to the representatives of States Parties to the Statute needs further consideration.

[9] A question was raised about the applicability of this article to family members.

considered as periods of residence for purposes of taxation. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources.

7. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors and Registrars and their dependants.

Article 15
Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry

1. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of employment with the Court;

(c) Inviolability for all official papers and documents of the Court;

(d) Exemption from taxation on the salaries, emoluments and allowances paid to them by the Court. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources;

(e) Immunity from national service obligations;

(f) Together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(g) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(h) The same privileges in respect of exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the State Party concerned;

(i) Together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(j) The right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking post in the State Party in question and to re-export the same free of duty to their country of permanent residence.

2. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of the staff of the Office of the Prosecutor, members of the staff of the Registry and their dependants.

Article 15 bis[10] [11]
Personnel recruited locally and assigned to hourly rates

Personnel recruited by the Court locally and assigned to hourly rates shall be accorded immunity[12] from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Court. Such immunity shall continue to be accorded after termination of employment with the Court for activities carried out on behalf of the Court. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Court.

Article 16[13]
Counsel and persons assisting counsel

1. Counsel and persons assisting defence counsel in accordance with rule 22 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business, subject to production of the certificate referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to exercise their functions;

(c) Inviolability of documents, papers and materials relating to the exercise of their functions;

(d) The right to receive and send papers or correspondence by courier or in sealed bags and to receive and send electronic communications;

(e) Exemption from immigration restrictions or alien registration;

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or

---

[10] A proposal was made that this provision should be drafted as follows:

"Personnel performing functions of a general, supportive character for the Court shall, even after the termination of their employment with the Court, be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Court."

[11] This provision will be the subject of further discussion in the Working Group.

[12] A suggestion was made that the word "immunity" should be qualified by the words "necessary functional".

[13] Discussions on this article were not conclusive and issues raised include: question whether or not in relation to the expression "persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence" appearing throughout the article, the term "counsel" should be qualified by the word "defence"; question of the precise nature of the privileges and immunities accorded to counsel; question of the scope of the expression "persons assisting counsel"; and question of the appropriateness of including subparagraph (e) of paragraph 1 in the article.

articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel, or persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence, concerned;

(g) The same facilities in respect of currency and exchange as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel and the persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence shall be provided with a certificate under the signature of the Registrar for the period required for the exercise of their functions. Such certificate shall be withdrawn if the power or mandate or the employment to assist counsel is terminated before the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel or persons assisting them are present in a State Party for the discharge of their functions shall not be considered as periods of residence.

Article 17[14]

Experts, witnesses, victims and other persons required to be present at the seat of the Court

1. Experts, witnesses, victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence, and other persons required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court and shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities provided for in article 16, subparagraphs (a) to (f), of the present Agreement.

2. Experts, witnesses and other persons required to be present at the seat of the Court shall be accorded repatriation facilities in time of international crisis.

3. Experts, witnesses and other persons accorded the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

[14] Discussions on this article were not conclusive and issues raised include: the need to expand the scope of the article to cover other persons involved in the proceedings but not required to be present at the seat of the Court or persons assisting the Court in one way or the other; differentiating the scope of privileges, immunities and facilities for experts and other persons referred to in this article; appropriateness of coverage for victims insofar as they are not expressly referred to in article 48 of the Statute; the need to distinguish between different categories of witnesses and victims and to allocate appropriate privileges, immunities and facilities to them; the need to distinguish between privileges and immunities and protective measures; inclusion of express reference to article 68 (3) of the Statute; redrafting of this article along the lines of article XVIII of the Headquarters Agreement of the International Tribunal for the Former Yugoslavia.

Article 17 bis[15]

Article 18
Cooperation with the authorities of States Parties

1. The Court shall cooperate at all times with the appropriate authorities of States Parties to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in the present Agreement.

2. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under the present Agreement to respect the laws and regulations of the State Party in whose territory they may be on the business of the Court or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

Article 19
Waiver

1. The privileges and immunities provided for in articles 14 to 17 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case, where they can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:[16]

(e) In the case of counsel, experts, witnesses or any other person required to be present at the seat of the Court, by the Court in accordance with its Regulations;[17] [18]

---

[15] The addition of the following text for a new article 17 bis was suggested:

"Such privileges and immunities as may be accorded to nationals within their territory shall be understood to have been granted, in the case referred to in article 15, exclusively for the performance of their functions, and, in the cases referred to in articles 16 and 17, by reason of their actions before the Court."

[16] A suggestion was made to restore paragraph 2 to its former wording by including the following subparagraphs: "(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges; (b) In the case of the Registrar, by the Presidency of the Court; (c) In the case of the Deputy Prosecutor and the staff of the Office of the Prosecutor, by the Prosecutor; (d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar".

[17] Suggestions were made for counsel to be dealt with in a separate provision from that dealing with experts, witnesses and other persons. The issue of who should waive counsel's privileges and immunities is subject to further discussion. It was suggested that the Presidency may be the appropriate organ for the waiver of immunities.

[18] It was suggested that if the immunity of counsel is waived, provision should be made for maintaining the guarantees to the accused, such as the confidentiality of the communications between counsel and the accused as well as the confidentiality of the documentation.

(f) In the case of personnel recruited locally and assigned to hourly rates, by ...[19]

3. Privileges and immunities are accorded to the representatives of States Parties not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the work of the Court and the Assembly. Consequently, a State Party not only has the right but is under a duty to waive the immunity of its representative in any case where, in the opinion of that State Party, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Article 20[20]
Notification

Notification regarding experts and witnesses as well as victims shall be subject to any decisions taken by the Court regarding the protection of witnesses, experts and victims.[21] The Registrar shall communicate periodically to all States Parties the categories and names of persons to which the provisions of the present Agreement shall apply, in particular the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor, the staff of the Registry and counsel. The Registrar shall also communicate to all States Parties information on any change in the status of these persons.

Article 21[22]
Laissez-passer

The States Parties shall recognize and accept the United Nations laissez-passer issued to the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry as a valid travel document.[23]

Article 22
Visas

Applications for visas or entry/exit permits, where required, from all persons who are holders of the United Nations laissez-passer, and also from persons referred to in articles 16 and 17 of the present Agreement, who have a certificate or other document issued by the Court confirming that they are travelling on the business of the Court, shall be dealt with by the States Parties as speedily as possible and granted free of charge.[24]

---

[19] Suggestions were made that immunity of these personnel could be waived by either the Presidency, the Prosecutor or the Registrar. This issue needs further consideration.

[20] This provision will be the subject of further discussion in the Working Group.

[21] It was suggested that, in order to ensure adequate protection, any notification should be preceded by Court authorization.

[22] Final wording of this article awaits drafting of the relevant provision of the Relationship Agreement between the United Nations and the International Criminal Court.

[23] It was suggested that the Court could issue its own laissez-passer, which could serve as travel document for the persons referred to in articles 13 to 17 of this Agreement.

[24] A reservation was expressed as to the appropriateness of recognizing certificates as valid travel documents for the purpose of issuing visas.

Article 23
Settlement of disputes with third parties

The Court shall, on the basis of general guidelines to be approved by the Assembly,[25] make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;

(b) Disputes involving any person referred to in the present Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

Article 23 (bis)
Differences on the interpretation or application of the present Agreement

1. All differences arising out of the interpretation or application of the present Agreement between two or more States Parties or between the Court and a State Party shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 within [3] months following a written request by one of the parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each party to the difference and the third, who shall be the chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within [2] months of the appointment of a member by the other party, the President of the International Court of Justice shall make such appointment at the request of such party. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within [3] months following their appointment, the chairman shall be chosen by the President of the International Court of Justice upon the request of either party to the difference.

4. Unless the parties to the difference otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of the present Agreement and their applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties to the difference.

6. The decision of the arbitral tribunal shall be communicated to the parties to the difference, to the Registrar and to the Secretary-General.

[25] This expression will be the subject of further discussion in the Working Group.

Article 24
Signature, ratification, acceptance, approval or accession

1. The present Agreement shall be open for signature by all States until ... at the seat of the Court in The Hague and thereafter, until ... at United Nations Headquarters in New York.

2. The present Agreement is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25
Entry into force

1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the United Nations of the tenth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to the present Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of the United Nations of its instrument of ratification, acceptance, approval or accession.

Article 26
Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce the present Agreement. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of the present Agreement.

Article 27
Depositary

The Secretary-General of the United Nations shall be the depositary of the present Agreement.

Article 28
Authentic texts

The original of the present Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.